IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5948 of 2003

WITH

CIVIL APPLICATION NO 4633 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOBDARKHAN HAMIRKHAN JALVANI

Versus

KHATRI ISHWARLAL VALLABHDAS MACHHAR

Appearance:

1. Special Civil Application No. 5948 of 2003

MR MRUGEN K PUROHIT for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 03/12/2003

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Mrugen Purohit for the petitioner. This petition is preferred by the petitioner for quashing and setting aside the order at Annex.A collectively and seeking other mandatory directions. After hearing both the parties, the petition came to be admitted by issuing Rule and interim relief in terms of para-15(C) was granted in favour of the petitioner pending the hearing and final disposal of the petition.

2. That pending the final hearing of this petition, Ms. Sejal Mandavia, ld. counsel appearing for the applicant- respondent in the main petition, has preferred above-numbered Civil Application for vacating interim relief granted earlier. In the alternatively, she has submitted that main petition be heard finally. Hence, main petition is taken up for final hearing with the consent of the ld. counsel appearing for the parties.

3. During the course of oral submissions, Ms. Mandavia, ld. counsel appearing for the respondent (i.e. applicant of above-numbered civil application) has submitted that the present petitioner has approached this Court against the order passed by ld. District Judge while dealing with Civil Misc. Appeal preferred under O.39 R.1 of CPC against the order passed by ld. trial Judge below application exh.5 in Reg. Civil Suit No.39/2003 on 25.3.2003. So, at least said Appeal pending before the ld. District Judge be ordered to be heard and disposed of as expeditiously as possible because the applicant- original respondent was successful in getting the interim relief vacated when ld. Civil Judge has decided the application preferred under O.39 R.1 & 2 of CPC. Ld. counsel Mr. Purohit appearing for the petitioner has rightly argued that allowing the above-numbered civil application would amount to reviewing of the order passed earlier by this Court at the time of admission of the petition. He has, however, submitted that he has no objection if the appeal preferred by the petitioner before the District Court is ordered to be heard and disposed of expeditiously. However, till then interim relief granted by this Court should be ordered to be continued and order under challenge in this petition be quashed and set aside.

4. There is force in the submissions made by ld. counsel Mr. Purohit for the petitioner. Unless the order under challenge is quashed and set aside, the petition would frustrate and hence this Court is required to take appropriate care while directing the District Judge concerned to hear and dispose of the appeal pending

before him expeditiously.

5. In view of above, the impugned order under challenge in this petition is hereby quashed and set aside and ld. Appellate Judge concerned is directed to hear and decide Civil Misc. Appeal No.6/2003 pending before him as expeditiously as possible and preferably within 3 months from the date of receipt of writ of this judgment. It is further ordered that pending the hearing and final disposal of the said appeal before the ld. Appellate Judge concerned, the interim relief granted in the present petition shall continue till then. Rule is made absolute to the aforesaid extent. No costs.

6. In view of disposal of main petition as above, the above-numbered Civil Application does not survive. Hence, the same also stands disposed of accordingly. No costs.

[C.K. BUCH, J]

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